



IT IS ORDERED

Date Entered on Docket: September 28, 2018

The Honorable David T. Thuma
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

CYNTHIA A. P. MOYA
aka Cynthia Moya

Case No. 7-18-11956-TA

Debtor.

**ORDER RESULTING FROM HEARING ON MOTION FOR RELIEF
FROM AUTOMATIC STAY AND ABANDONMENT OF PROPERTY
LOCATED AT 1413 TIFFANY LANE SE RIO RANCHO, NEW MEXICO 87124**

This matter came before the Court on September 24, 2018 for a Preliminary Hearing on Carrington Mortgage Services, LLC's Motion for Relief from Stay and for Abandonment of Property to Carrington Mortgage Services, LLC, filed on August 27, 2018 (DOC 21) (the "Motion") by Carrington Mortgage Services, LLC ("Carrington") and the Debtor's Objection filed on September 17, 2018 (DOC 27) (the "Objection"). The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed, FINDS:

(a) On August 27, 2018, Carrington served the Motion and a notice of the Motion (the "Notice") on James Clay Hume, (Attorney for Debtor) and Edward Alexander Mazel (the "Trustee") by use of the Court's case management and electronic filing system for the transmission of notices, as

authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Debtor Cynthia A. P. Moya, by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

(b) The Motion relates to the property located at 1413 Tiffany Lane SE Rio Rancho, New Mexico 87124, more fully described as:

Lot numbered Four (4) in Block numbered Two (2) of Trinity Estates, as the same is shown and designated on the Plat entitled, "Trinity Estates, a Subdivision of Tract A, in Corrales South, within projected Sections 29 and 32, T. 12 N.R. 3 E., N.M.P.M., City of Rio Rancho Estates, Town of Alameda Grant, Sandoval County, New Mexico", filed in the office of the County Clerk of Sandoval County, New Mexico, on April 7, 1999, in Volume 3, Folio 1851-B,

including any improvements, fixtures, and attachments, such as, but not limited to, mobile homes (the "Property"). If there is a conflict between the legal description and the street address, the legal description shall control.

(c) The Notice provided for an objection deadline of 21 days from the date of service of the Notice, to which three days was added pursuant to Bankruptcy Rule 9006(f);

(d) The Notice was sufficient in form and content;

(e) The objection deadline expired on September 21, 2018;

(f) On September 17, 2018 the Debtor filed the Objection;

(g) As of September 21, 2018 the Trustee, nor any other party in interest, filed an objection to the Motion;

(h) A Preliminary Hearing (the "Hearing") was held on September 24, 2018 at 9:00AM before the HONORABLE DAVID T. THUMA

(i) There was no bona fide dispute raised by the Debtor at the Hearing that Carrington Mortgage Services, LLC is entitled to relief under §362(d); and

(j) By submitting this Order to the Court for entry, the undersigned counsel for Carrington certifies under penalty of perjury that, on September 24, 2018 Rose L. Brand & Associates, P.C.

searched the data banks of the Department of Defense Manpower Data Center (“DMDC”), and found that the DMDC does not possess any information indicating that the Debtor is currently on active military duty of the United States.

IT IS THEREFORE ORDERED:

1. Pursuant to 11 U.S.C. §362(d), Carrington and any and all holders of liens against the Property, of any lien priority, are hereby granted relief from the automatic stay:

(a) To enforce its rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtor is a party, to the extent permitted by applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtor or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to it under law or equity with respect to the Property.

2. The Trustee is deemed to have abandoned the Property from the estate pursuant to 11 U.S.C. §554 as of the date of entry of this Order, and the Property therefore no longer is property of the estate. As a result, Carrington need not name the Trustee as a defendant in any state court action it may pursue to foreclosure liens against the Property and need not notify the Trustee of any sale of the Property.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtor, in the event that a discharge order is entered. The Debtor can be named as a defendant in litigation to obtain judgment or to repossess the Property in accordance with applicable non-bankruptcy law, pursuant to any discharge order entered.

4. This Order does not waive Carrington’s claim against the estate for any deficiency owed by the Debtor after any foreclosure sale or other disposition of the Property. Carrington may

filed an amended proof of claim this bankruptcy case within thirty (30) days after a foreclosure sale of the Property, should it claim that Debtor owe any amount after the sale of the Property.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

6. This order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

XXX END OF ORDER XXX

RESPECTFULLY SUBMITTED:

ROSE L. BRAND & ASSOCIATES, P.C.

By: /s/Andrew P. Yarrington

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APPROVED AS TO FORM ONLY:

HUME LAW FIRM

By Approved via Email on September 24, 2018

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